

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ROY LEE ALLOWAY,)
)
 Defendant.)

NO. CR11-5233RBL

**GOVERNMENT'S SENTENCING
MEMORANDUM**

The United States of America, by and through Jenny Durkan, United States Attorney for the Western District of Washington, and Bruce Miyake and Mike Lang, Assistant United States Attorneys for said District, files this Sentencing Memorandum.

I. INTRODUCTION

The defendant, Roy Alloway, is before the Court for sentencing after entering a guilty plea to the following counts alleged in an Information:

Unlawful Dealing of Firearms, as charged in Count One, in violation of Title 18, United States Code, Section 922(a)(1); and

Filing of a False Tax Return, as charged in Count Two, in violation of Title 26, United States Code, Section 7206(1).

The United States agrees with United States Probation's calculation of the advisory sentencing guideline range as 37 to 46 months confinement. The United States recommends that the court sentence the defendant to 46 months confinement, followed by

three years of supervised release, and the \$100 special assessment per count. The United States recommends that the Court impose all of the conditions of supervision submitted by the probation department in its Presentence Report. The defendant has agreed to pay restitution for his unpaid taxes in the amount of \$8,635.71, and has agreed to forfeit 45 firearms involved in this offense, which were seized from his home.

II. FACTUAL BACKGROUND

Roy Alloway was a prolific firearms dealer who operated without a license. Despite repeated warnings that his conduct was against the law, Alloway purchased and sold over 700 firearms without a firearms license.¹ See Exhibit One. In addition, for a three year period, Alloway deposited over \$150,000.00 in revenue from his gun sales into his personal bank account, and failed to report this revenue on his tax returns.

A. Background of Federal Firearms Licenses

A Federal Firearms License (FFL) is issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and allows an individual or company to engage in the business of selling firearms. The FFL process is relatively simple – a potential licensee must fill out a four page application, submit fingerprints and a photograph, and undergo a background check. The ATF interviews the applicant, inspects any premises used to sell firearms, and notifies the applicant of rules and regulations pertaining to firearms sales.

The FFL imposes certain obligations upon the license holder. The licensee must prepare and keep records of all firearms transactions, must notify the IRS of their business operations, and must submit to ATF inspections, among others. These obligations are in no way onerous, and are intended to protect the public from firearms getting into the wrong hands.

¹ This figure does not include any firearms that Alloway obtained through private parties since there is no paperwork associated with these transactions. An associate of Alloway's estimated that the actual volume of guns that Alloway purchased, and consequently sold, was at least two times greater than the recorded gun purchases since Alloway obtained guns from private parties.

The FFL obligations were first enacted in 1968, under the Omnibus Crime Control and Safe Streets Act, whose legislative history informs that it was designed to curb crime and keep “. . . firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.” S. Rep. No. 90-1097 (1968).

The Supreme Court further clarified the importance of these statutory goals, explaining:

Information drawn from records kept by dealers was a prime guarantee of the Act’s effectiveness in keeping ‘these lethal weapons out of the hands of criminals, drug addicts, mentally disordered persons, juveniles, and other persons whose possession of them is too high a price in danger to us all to allow.’” 114 Cong. rec. 13219 (1968)(remarks of Senator Tydings).”

Huddleston v. United States, 415 U.S. 814, 825 (1974)

B. Alloway’s Firearms Dealing.

1. The early warnings.

Alloway first became interested in selling firearms in 2004, when he accompanied a fellow police officer, Troy Wiktorek, to local gun shows.² Shortly after being introduced to the gun shows, Alloway decided to get involved in selling firearms. It soon became an obsession and, though still working full time as a law enforcement officer, Alloway spent his most of his weekends and much of his free time buying and selling firearms.

It did not take long before the ATF noticed that Alloway was buying an inordinately high number of firearms. Agents had observed Alloway and Wiktorek selling firearms at the local gun shows.³ Based upon this information, the ATF believed Alloway and Wiktorek were violating the law by dealing firearms without a license.

² Troy Wiktorek is a former Shelton police officer. He and Alloway met through the West Sound Narcotics Enforcement Team (WestNet). They became friends and eventually opened a gun store under the name Renegade Guns and Loans, LLC.

³ Guns shows are held throughout Washington State. They are sponsored by private organizations such as the Washington Arms Collectors (WAC) which is a private organization of gun owners and enthusiasts. The WAC sponsors gun shows in Puyallup and Centralia. At these gun shows, both FFL and private individuals can rent space and set up tables to sell guns. Unlike an FFL, the private seller, selling guns from his/her own gun collection, does not have to do a background check on the purchaser or keep any record of sales. This is commonly referred to as the gun show “loophole”.

On March 10, 2005, ATF Special Agent Brad Devlin met with Alloway and Wiktorek to warn them that they were violating federal laws related to firearms dealing.⁴ Devlin provided Alloway with his multiple firearms purchase records, showing that between October 2004 and February 2005, Alloway had purchased 54 handguns.⁵ Devlin warned the pair that they were buying and selling far too many guns to do so without an FFL. Devlin informed Alloway and Wiktorek that it was illegal to profit from the sale of firearms without a federal firearms license and advised them that if they wished to continue selling firearms they needed to get a license. Devlin later explained that he contacted the pair as a “professional courtesy” due to their status as police officers.

Notwithstanding this courtesy, Alloway continued to buy and sell firearms without an FFL. Between March 10, 2005, the date of Agent Devlin’s first warning, and September 30, 2005, when the ATF sent another warning, records show that Alloway purchased an additional 51 firearms – or approximately eight per month or two per week. On September 30, 2005, the ATF sent a warning letter to Alloway:

It has come to our attention that you have engaged in the repetitive purchase and sale of firearms. We have reason to believe that you are engaged in the business of dealing in firearms. If you intend to engage in the business of dealing in firearms as a firearms dealer, *you must first obtain a Federal Firearms License (FFL)*

(Emphasis added).

This letter was also sent to Alloway’s employer, the Bremerton police department, and a copy was placed into Alloway’s personnel file. Nevertheless, Alloway also ignored this warning, and continued to buy and sell a hundreds of guns without a license.

2. Opening Renegade Guns.

In contrast to Alloway, Wiktorek took the warning by Devlin seriously and reduced his firearms activity. Wiktorek had been thinking of opening a gun shop, and the

⁴ Ironically, Alloway and Wiktorek were at a local firearms dealer when they received the call from Agent Devlin.

⁵ FFL’s must file with the ATF a record of any multiple handgun purchases made on the same day by an individual.

1 warning prompted him to pursue the idea. Consequently, after the ATF warning,
2 Wiktorek decided to apply for a federal firearms license and open a gun store in Shelton,
3 Washington. Wiktorek asked Alloway if he would be interested in obtaining an FFL, and
4 jointly opening the gun store. Initially, Alloway was reluctant, but he eventually agreed
5 to go into business with Wiktorek.

6 Thus, in August 2006, Wiktorek and Alloway filed an FFL application. At that
7 time, Wiktorek also filed a business application with the Washington Secretary of State,
8 creating a Limited Liability Corporation for a business identified as "Renegade Guns and
9 Loan, LLC." On the LLC and in the FFL application, Wiktorek listed Alloway and
10 himself as owners of Renegade Guns, a storefront operation in Shelton, Washington

11 Alloway's participation in Renegade Guns and Loans was minimal. Due to his
12 schedule and the distance from his residence, it was difficult to be present at the store. In
13 approximately March or April 2007, Wiktorek and Alloway parted ways, and Alloway
14 was no longer considered part of the business or the FFL.

15 Even during the few months that Alloway was part of Renegade Guns, he
16 continued to buy guns for himself, and sell them for his personal profit as an FFL. In
17 fact, he used the cover of the Renegade Guns business to further his private selling.
18 During and after his involvement with Renegade Guns, Alloway rented tables as gun
19 shows next to Wiktorek, as if to make it look like he was abiding by the law. Wiktorek,
20 operating as Renegade Guns, actually was abiding by all federal firearms laws, including
21 running background checks on anyone who purchased a firearm from him at gun shows.
22 Alloway, on the other hand, continued to sell firearms without doing any paperwork or
23 background checks.

24 Alloway also used the Renegade Gun business to increase his personal profit. He
25 obtained many of his guns from other businesses, informing these businesses that he was
26 a firearms "dealer," (a co-owner of Renegade Guns). In fact, he was simply routing guns
27 through Renegade as a "dealer to dealer" sale -- a paper exercise. Once he obtained the
28 guns, Alloway sold them for his own personal profit. Not only did this business method

1 give Alloway a preferred treatment by other businesses, Alloway was also able to
2 purchase firearms without paying sales tax, thereby increasing his profit margin.

3 **3. Warnings from others.**

4 Alloway's prolific, private gun sales did not escape the notice of his peers in the
5 gun business, several of whom warned Alloway that he needed to obtain an FFL. For
6 example, in 2008, an employee at Boerner's Firearms, a business in Bremerton from
7 whom Alloway was buying many firearms, warned Alloway that, given the volume of
8 firearms he was selling, he needed an FFL. Alloway disputed this point, and rejected the
9 suggestion. In fact, shortly after this conversation, Alloway stopped buying guns from
10 Boerner's.

11 Two other individuals who regularly attended gun shows, and rented tables near
12 Alloway, warned Alloway that he should not be selling so many guns or he would attract
13 the attention of the ATF. Alloway ignored these warnings too. In fact, he was so
14 confident that he would not be arrested, he flippantly told them, "I'll just say I'm a
15 collector."

16 However, Alloway clearly knew he might be headed for trouble. On another
17 occasion, Alloway asked an FFL owner, from whom he frequently purchased firearms,
18 what the ATF could do to him if he was caught selling firearms without a license. The
19 FFL owner told Alloway that the ATF could take all his guns.

20 **C. The Search of Alloway's residence**

21 All of these warnings came to pass on November 10, 2010, when ATF agents
22 served a search warrant on Alloway's residence. During the search, agents seized 58
23 firearms, 32 of which were tagged for sale.

24 The agents also recovered Alloway's handwritten notes from his 2005 meeting
25 with ATF Special Agent Devlin (*See Exhibit 3*), as well as a book listing his firearms
26 with a column for his purchase price, the sales price, and profit (*See Exhibit 4*), and the
27 letter he received from the ATF.
28

1 Alloway was interviewed and claimed his firearms activities were simply a hobby
2 and denied that the money from the sale of firearms were a major source of his income.

3 **D. Failure to Report Revenue and Income on Tax Returns.**

4 An examination of Alloway's bank records revealed that between 2007 and 2010,
5 Alloway deposited \$132,361.00 in cash, checks, or money orders into his account. The
6 vast majority of these deposits occurred early in the week (a Monday or Tuesday),
7 following a weekend gun show. The cash deposits essentially stopped after November
8 2010. Alloway did not include any of this information on his tax returns and did not pay
9 taxes on his profits.

10 Using these deposits as a base, the Internal Revenue Service has calculated that
11 between 2007 and 2010, Alloway's gross revenue from the sales of firearms was
12 approximately \$178,832.00. The IRS estimated that during this same time period,
13 Alloway's net income from firearms sales was \$35,766.53, and the tax that he owed on
14 this income was \$8,635.71.

15 **III. GUIDELINES CALCULATION**

16 The United States calculates Alloway's guidelines range as follows:

17	Base Offense Level (U.S.S.G. 2K2.1)	12
18	Offense involved more than 200 firearms:	+10
19	Offense involved stolen firearms:	+ 2
20	Acceptance of Responsibility:	- 3
21	Total Offense Level:	21

22 Alloway has no criminal history, and therefore his Criminal History Category is I.
23 This leads to an advisory guidelines range of 37-46 months confinement.

24 **IV. FORFEITURE**

25 The government requests that the Court enter a Agreed Preliminary Order of
26 Forfeiture for 45 of the firearms seized from Alloway's home on November 18, 2010.
27 This Agreed Order will be filed separately.
28

1 Of the 58 guns seized, the government had agreed to return nine firearms seized
 2 from Alloway's home, which were found in Alloway's private home safe, and not marked
 3 for sale, thus indicating that they were likely not involved in the offense. These will be
 4 returned to a third party and put up for sale. They will not be returned to Alloway.

5 **V. RESTITUTION FOR TAX LOSS**

6 Alloway has agreed to make restitution to the Internal Revenue Service for the
 7 unpaid taxes due and owing from the income generated by his firearms sales. This Court
 8 should order that Alloway pay restitution in the amount of \$8,635.71.

9 **VI. GOVERNMENT'S RECOMMENDATION**

10 The United States is recommending that this Court impose a sentence of forty-six
 11 (46) months confinement, which is at the high end of the guidelines range.

12 The United State's recommendation is based upon the statutory sentencing factors
 13 set forth in 18 U.S.C. § 3553, and in particular: (1) the nature and circumstances of the
 14 offense; (2) the history and characteristics of the defendant; (3) the need for the sentence
 15 to reflect the seriousness of the offense, to promote respect for the law, and to provide just
 16 punishment for the offense; (4) the need for the sentence to afford adequate deterrence to
 17 criminal conduct; and (5) the need for the sentence to protect the public from further
 18 crimes of the defendant.

19 **A. Nature and Circumstances of the Offense.**

20 The nature and circumstances of Alloway's offense justify a lengthy prison term.
 21 These circumstances include: the number of firearms that Alloway sold; the length of time
 22 that Alloway sold firearms; the income that he made; Alloway's disregard for warnings
 23 given to him about selling firearms without a license; and the fact that he was a police
 24 officer when he committed these crimes.

25 **1. The number of firearms involved in the offense.**

26 Alloway bought and sold an alarmingly high number of guns during the course of
 27 the five year charging period. This alone justifies a sentence at the high end of the
 28 guidelines range.

1 Conservatively, between November 2005 and November 2010 (the charged period
 2 of the offense), the ATF has determined that Alloway bought over 700 guns from dealers
 3 in Western Washington. The evidence supporting this comes from several sources,
 4 including Washington State Department of Licensing records,⁶ records from the website
 5 Gunbroker.com,⁷ and from the Acquisition and Distribution (A & D) books retained by
 6 three FFLs which sold guns to Alloway.⁸

7 Another important source of information about the volume of Alloway's gun sales
 8 are Alloway's financial records, which detail the revenue that Alloway generated during
 9 the charged time period. As explained above, IRS investigators have determined that, for
 10 only four years of this crime (2007-2010), Alloway generated gross receipts (cash and
 11 check deposits into his bank account) totaling \$178,832. Considering that Alloway sold
 12 most of his guns for a few hundred dollars, it is easy to infer that Alloway was selling
 13 hundreds of firearms during the course of this charged offense.

14 In comparison to other individuals whom the ATF has investigated during the same
 15 time frame as Alloway, his firearms purchases far exceeded the others.⁹

16 **2. Disregard of Warning Notices.**

17 Another factor justifying a 46 month sentence is Alloway's refusal to heed to the
 18 repeated warnings by the ATF, his associates, and others. As noted above, Alloway was
 19 advised on numerous occasions that, given the high volume of firearms he was selling, he
 20 needed a license. Yet, Alloway ignored these warnings and proceeded to knowingly, and

21
 22 ⁶ The DOL does not record sales of rifles (also known as long-guns), nor does it record the
 purchase of handguns from private sellers.

23 ⁷ Alloway was a regular user of a website known as "Gunbroker.com," on which he routinely
 24 bought and sold firearms. Gunbroker.com records show that Alloway sold approximately 20 firearms on
 this site.

25 ⁸ These three are: (1) Boerner's, a gun shop in Bremerton; (2) Law Enforcement Equipment
 26 Distribution in Tacoma; and (3) Dave's, a pawn shop in Bremerton.

27 ⁹ The other unrelated subjects investigated during the investigation were David Devenny (60),
 28 Mark Skiles (estimated to have bought and sold approximately 120 firearms), and Kevin Gussoni
 (purchased his firearms with Skiles and privately so ATF was not able determine the number of firearms
 he purchased during the relevant time period).

1 | prolifically, break the law.

2 | **3. Alloway's Status as a Police Officer.**

3 | Alloway's status as a police officer makes his crime particularly egregious, and is
4 | perhaps the strongest factor in favor of a sentence at the high end of the guidelines range.
5 | Not only did Alloway exhibit an alarming degree of hypocrisy and callousness in his
6 | chosen side-business, but at times he even used his status as a police officer to further his
7 | criminal activity.

8 | During the time frame of the instant offense, Alloway worked as a drug detective
9 | for WestNet. He and other WestNet detectives often seized firearms during their narcotics
10 | investigations. Kitsap County Sheriffs Office property records show that WestNet seized
11 | between 40 and 80 guns every few months between 2005 and 2010. WestNet would sell
12 | these firearms to a Tacoma FFL -- Law Enforcement Equipment Distribution (LEED). At
13 | times, Alloway identified guns seized by WestNet, repurchased them from LEED, and sold
14 | them back to the public for a profit. The ATF has determined that Alloway bought 507
15 | firearms from LEED. Of these 507 guns, 77 had been initially seized by either the Kitsap
16 | County Sheriff's Office, or WestNet, and then sold to LEED.

17 | Similar to WestNet, the Kitsap County Sheriff's office sold most of its seized and
18 | forfeited firearms to LEED. On occasion, Alloway volunteered to transport firearms from
19 | the Kitsap Evidence room to LEED, guns which Alloway later purchased from LEED and
20 | then sold at gun shows.

21 | On other occasions, evidence room custodians observed Alloway walking through
22 | the Kitsap evidence room, pointing out guns to Wiktorek and discussing what would be
23 | profitable to buy and sell.

24 | Alloway indiscriminately purchased all types of guns, particularly inexpensive guns
25 | favored by street criminals, which the business side of him knew would sell quickly.
26 | These firearms included semi-automatic assault rifles and handguns such as the MAC-10
27 | and MAC-11. Moreover, several of the guns that Alloway sold were related to crimes.
28 | The ATF, hampered by the lack of records in Alloway's gun sales, has nevertheless

determined that two of the guns that Alloway sold had been stolen from their original owners. In addition, several of the guns that Alloway sold were later recovered during crimes, including a robbery, three DUI's, and an assault.

What is perhaps most disconcerting about Alloway's business decision to sell firearms is that, as a police officer, he bore personal witness to the harm that firearms inflict upon society. During the years that Alloway was selling firearms on the open market, law enforcement officers were being gunned down at an alarming rate. Between 2005 and 2010, approximately 300 police officers were killed by firearms in the United States – roughly 50 per year.¹⁰ One hardly needs to be reminded of the horrific incidents which occurred in Washington State during 2009, when five police officers were felled by assailants' bullets. Before, during, and after these homicides, while serving as a police officer, as a detective on a narcotics Task Force, and as union representative for the Bremerton Police Department, Alloway blithely went about selling guns to anyone who would pay him. He did so without subjecting his buyers to a criminal background check, without concern as to where the guns would end up, and without any apparent concern or appreciation for the dramatic risks he was taking with people's lives.

4. The need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

This court's sentence should reflect the seriousness of the offense, in terms of the high volume of guns that Alloway sold. The sentence should also reflect that Alloway received more warning notices, more chances, and had more opportunities to correct his behavior, than most people who sell firearms without a license, or, for that matter, who engage in any criminal activity. He chose to turn his back on the ATF and others. Rather than abide by the law, he looked for ways to evade it. His behavior demonstrated a lack of respect for the law, and showed that he either did not care about the law, believed that the

¹⁰ These statistics come from the FBI Uniform Crime Reporting Programs, the National Law Enforcement Memorial Fund, and the Washington State Law Enforcement Memorial Fund. These statistics include officers feloniously killed in the line of duty by firearms.

1 law did not apply to him, or believed that he was smarter than anyone who might
 2 eventually investigate him.

3 VII. CONCLUSION

4 A forty-six month sentence would properly reflect the seriousness of the offense,
 5 promote respect for the law, and provide just punishment. Alloway sold hundreds of guns
 6 over the course of five years, to hundreds of buyers he did not know. In doing so, he
 7 knowingly permitted hundreds of firearms to enter the stream of commerce, without
 8 conducting a background check on a single purchaser, nor engaging in any other safeguard
 9 that the law attempts to place on these instruments of death. This is further aggravated by
 10 his decision not to report his revenue or income on his tax returns, and thus intentionally
 11 avoided paying taxes. All of this is compounded by Alloway's status as a police officer
 12 for over thirty years -- he personally saw the harm that firearms can do in society. In light
 13 of all of this, his behavior was reckless, callous, and offensive in the extreme.

14 DATED this 17th day of February, 2012.

15 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/JANET K. VOS

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